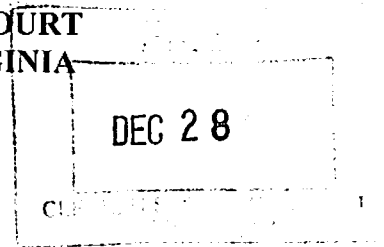


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



RYAN SHOTWELL,

Plaintiff,

v.

ACTION NO. 2:07cv504

C.O. SMITH,
C.O. SEAY, and
C.O. POWELL,

Defendants.

DISMISSAL ORDER

The plaintiff, a Virginia inmate, filed this pro se action pursuant to 42 U.S.C. § 1983 to redress alleged violations of his constitutional rights.

On November 7, 2007, the court ordered plaintiff to respond within thirty (30) days to interrogatories designed to particularize his claim. In addition, the court advised plaintiff that failure to respond to the order could result in dismissal of this action.

The thirty-day time limit has now elapsed, and the court has received no response from plaintiff. At this time, the court is unable to determine if plaintiff's complaint states a claim cognizable under section 1983. The court cannot continue to process plaintiff's complaint without the answers to its interrogatories. Accordingly, plaintiff's action is **DISMISSED** without prejudice to his right to resubmit the case.¹ Plaintiff is CAUTIONED, however, that the statute of limitations continues to run.

¹ Since this is a procedural dismissal without prejudice, the four-factor test enunciated in Doyle v. Murray, 938 F.2d 33, 34 (4th Cir. 1991), is inapplicable. The dismissal in Doyle was with prejudice pursuant to Federal Rule of Civil Procedure 41(b), which "operates as an adjudication upon the merits." Such is not the case here.

Plaintiff is advised that he may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within thirty (30) days from the date of this Dismissal Order. If plaintiff wishes to proceed in forma pauperis on appeal, the application to proceed in forma pauperis is to be submitted to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is **DIRECTED** to send a copy of this Dismissal Order to the plaintiff at his last known address.

IT IS SO ORDERED.

Norfolk, Virginia

December ~~28~~, 2007

/s/
Walter D. Kelley, Jr.
United States District Judge 